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November 23, 2004

VIA FACSIMILE

To: Examiner Dennis H. Pedder
Group Art Unit: 3612
U.S.P.T.O.

Facsimile No.: (703) 872-9306

From: Scott M. Tulino

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Re: Enclosed Petition to Withdraw Finality of Rejection as Premature
U.S. Patent Application Serial No. 10/091,470
Your Reference: F05-138814M/MK○
Our Reference: NGB.090

Dear Examiner Pedder:

Enclosed for filing is a Petition to Withdraw Finality of Rejection as Premature in response to the Final Office Action mailed on September 24, 2004.

Thank you in advance for your kind consideration on this case.

Very truly yours,



Scott M. Tulino
Sean M. McGinn

SMT/SMM/geb
Enclosures
Total pages transmitted: 4

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In re Application of

Kenichi Satou

Serial No.: 10/091,470

Group Art Unit: 3612

Filed: March 7, 2002

Examiner: Dennis H. Pedder

For: BUMPER STRUCTURE

Honorable Commissioner of Patents
Alexandria, VA 22313-1450
Box AF**PETITION UNDER 37 C.F.R. §1.181 TO WITHDRAW FINALITY OF
REJECTION AS PREMATURE**

Sir:

Applicant respectfully petitions under 37 U.S.C. §1.181 that the finality of the above-identified Patent Application be withdrawn as premature in accordance with the guidelines of MPEP §706.07(a). This guideline states "...second or any subsequent action on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims...".

Applicant respectfully submits that, contrary to the Examiner's position in the latest Office Action dated September 24, 2004, one of ordinary skill in the art would readily recognize that the claim amendments in the Amendment filed under 37 C.F.R. §1.111, filed on August 17, 2004, were not directed to the purpose of overcoming the rejection of the Office Action dated May 21, 2004. Furthermore, the amendments to the claims did not affect the Examiner's prior art search. Applicant submits that no claim amendments were necessary to overcome the Examiner's rejections and that the Amendments were clearly not so intended. Such as affirmatively and unequivocally stated in the previous Amendment.

The Examiner's new grounds for rejection in the present Office Action have been applied to claims 1-7 of the Application.

In the previous Amendment, there were no substantive amendments to any of claims 1-7. Specifically, the amendments to claims 1-2 and 4-5 were merely editorial amendments, as is clear from a review of the claims, and as such had no affect on the Examiner's search.

Serial No. 10/091,470
Docket No. F05-138814M/MKO
NGB.090

2

Claims 3 and 6- 7 were not amended at all.


Applicant submits, arguendo, that even if the Examiner's new grounds of rejection were necessitated by Applicant's previous amendment of claims 1-2 and 4-5, MPEP § 706.07(a) states that "a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art." (Emphasis by Applicant).

Therefore, because claims 3 and 6- 7 were not amended, the finality of the Examiner's rejection is premature.

For at least the reasons outlined above, Applicant petitions that the finality of rejection for the above-identified Application be withdrawn.

Respectfully Submitted,

Date: November 23, 2004



Scott M. Tulino
Registration No. 48,317

Sean M. McGinn
Registration No. 34,386

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Serial No. 10/091,470
Docket No. F05-138814M/MKO
NGB.090

3

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that I am filing this Petition to Withdraw Finality of Rejection as Premature by facsimile with the United States Patent and Trademark Office to Examiner Dennis H. Pedder, Group Art Unit 3612 at fax number (703) 872-9306 this 23rd day of November, 2004.



Scott M. Tulino
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Sean M. McGinn
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